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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,227	09/18/2006	Elizabeth Harumi Kobara Pestell	HF/15-23033/A/PCT	7040
324	7590	05/29/2009	EXAMINER	
JoAnn Villamizar Ciba Corporation/Patent Department 540 White Plains Road P.O. Box 2005 Tarrytown, NY 10591			NGUYEN, THUY-AI N	
			ART UNIT	PAPER NUMBER
			1796	
			NOTIFICATION DATE	DELIVERY MODE
			05/29/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/593,227	KOBARA PESTELL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	THUY-AI N. NGUYEN	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1- 2, 4- 10, and 13- 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1- 2, 4- 10, and 13- 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/20/2009 has been entered.

Claims 3, 11 - 12 and 16 - 20 have been cancelled. Claims 1, 4- 10 and 13- 15 have been amended. Claims 1- 2, 4- 10, and 13- 15 are pending.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4 – 7, 9 – 10, and 14- 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ghosh et al. (US. 2004/0261196) in view of Model et al. (US. 3,903,007).

Regarding claims 1, 2 and 20, Ghosh et al. teach the composition for treating fabric articles (abstract and [0119]), wherein the composition comprises antimicrobial

Art Unit: 1796

agent including 2-(4'-thiazolyl) benzimidazole [0101] which satisfy the formula as recited by the applicant when  $R_1$  is hydrogen. Ghosh et al. teach the composition comprising from about 0.01 to 20 percent of antimicrobial organism [0100], including 2-(4'-thiazolyl)benzimidazole [0101], 1 to 99 percent by weight of surfactants including anionic, nonionic, cationic, and zwitterionic [0095] which is detergent. Ghosh et al. further teach the composition comprising builder, bleach, bleach activator, alcohol, hydrotropes, fabric softening agent [0118], and water in an amount of from 1 to 90 percent by weight of the composition [0112]. Ghosh et al. '196 teach the method of cleaning the fabric articles in conventional laundry process or in a dry cleaning process [0027] in which the cleaning composition should contact with the fabric articles, wherein the conventional cleaning is carried out with a large amount of water at the consumer's home or other place [0004].

Ghosh et al. '196 do not teach method of cleaning and the ratio of the textile fiber materials to water in washing machine. Model et al. teach detergent composition comprising hydroxyl- diphenyl ether and method of using (see examples I - II, col. 9 - 10), wherein the ratio of fabric to water (washing liquor) is 1: 20. Ghosh et al. '196 and Model et al. are analogous arts because they are in the same field of endeavor, namely, cleaning composition comprising the same antimicrobial agent. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the method of cleaning and the ratio of Model et al. in the teaching of Ghosh et al. to provide the convenience for the consumer and achieve a suitable level for microbial disinfection.

Regarding claims 4 and 6 -7, see the rejection of claim 1. Ghosh et al. further teach the composition comprising cleaning adjuncts in an amount of from 0.01 to 10 percent [0028] including builder, bleach and bleach activator (claim 19, p. 8). Ghosh et al. also teach the composition comprising sulfonated oleic acid [0101] which is capable of using as component (b) which can be used in an amount of from 0.01 to 20 percent [0100].

Regarding claim 5, see the rejection of claims 4, 6- 7 above.

Regarding claims 9- 10, Ghosh et al. teach the composition comprising an antimicrobial agent 2,4,4'- trichloro- 2' hydroxyl diphenyl ether [0102], which satisfies the formula as recited by the applicant when  $p=0$ ,  $n=0$ , and  $o=1$ ,  $m=1$ , and  $r=2$ .

Regarding claim 14, Ghosh et al. teach the method of using the composition for cleaning clothing [0027]. However, Ghosh et al. do not teach the method being used for cotton, wool, and polyamide. Model et al. teach a detergent composition and a method of using the composition cleaning fibers including cotton, wool and polyamide (col. 5: 62- col. 6: 3). At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the teaching of Model et al. in the teaching of Ghosh et al.. The motivation is to provide acceptable cleaning across variety of materials to meet high expectation of the users.

Regarding claim 15, see the rejection of claim 1. Ghosh et al. do not teach the method, wherein the composition is in solid or liquid. Model et al. teach the composition in liquid form (emulsion concentrate, col. 22: 3- 47), or in solid form (powder, col. 21: 30- 68). At the time of the invention, it would have been obvious to one of ordinary skill in

Art Unit: 1796

the art to use variety form of the composition of Model et al. in the teaching of Ghosh et al.. The motivation is to provide the wide range for using the composition in different applications.

Claim 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ghosh et al. (US. 2004/0261196) and Model et al. (US. 3,903,007) as applied to claim 1 above in view of Majeti et al. (US. 2003/0212232).

Regarding claim 8, see the rejection of claim 1. Ghosh et al. teach the composition comprising enzyme. However, Ghosh et al. do not teach specific enzyme in the composition. Majeti et al. teach the composition for treating textile and hard surface, wherein the composition comprises the enzyme including protease, amylase, and lipase [0181]. Majeti et al. and Ghosh et al. are analogous art because they are in the same field of endeavor, namely, home care composition for textile or fabric and other surface, wherein both composition comprises antimicrobial agent 2',4,4'-trichloro-2-hydroxy-diphenyl-ether. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use protease, amylase, and lipase of Majeti et al. in the teaching of Ghosh et al. as an alternative equivalent in order to help break down the stain on the surface being treated.

Regarding claim 13, see the rejection of claims 1 and 8. Ghosh et al. do not teach specific temperature. Model et al. teach the method of cleaning as said, wherein the temperature of the process is at 40 degree of Celsius (col. 11: 1- 8). At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the

Art Unit: 1796

temperature in the method of Model et al. in the teaching of Ghosh et al.. The motivation is to achieve the effective cleaning efficacy of the composition.

### ***Response to Arguments***

Applicant's arguments filed on March 20, 2009 have been fully considered but they are not persuasive.

According to the argument of the rejections of claims 1, 2, and 20, applicant argues that Ghosh et al. do not disclose a composition that can be used in a major amount of water. This is not true when Ghosh et al. disclose a detergent composition comprising from 1 to 90 percent of water as said [0112]. In addition, Ghosh et al. also state that the composition is used in conventional laundry cleaning which is carried out with large amount of water [0027 and 0004]. The terms "wash fluid fabric article treating composition" are defined as a lipophilic fluid- containing composition [0028] which is not the same with "wash fluid" mentioned in the argument.

Because the rejections of claims 1, 2 and 20 are deemed proper, claims 1, 2 and 20 as well as 3- 7 and 9- 11 stand rejected.

Argument of rejection of claims 8, and 12- 18 are not persuasive because according to the argument above, Ghosh et al. and Majeti both disclose cleaning compositions for aqueous domestic laundry. Thus, substituting antimicrobial agent (2-(4-thiazolyl)benzimidazole) for another in the teaching of the Majeti is reasonable. An express suggestion to substitute one equivalent component for another is not necessary

Art Unit: 1796

to render such substitution obvious. In re Fout, 675 F.2d 297,213 USPQ 532 (CCPA 1982) MPEP. 2144.06.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THUY-AI N. NGUYEN whose telephone number is (571)270-3294. The examiner can normally be reached on Monday-Friday: 8:30 a.m. - 5:00 p.m. eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo/  
Supervisory Patent Examiner, Art Unit 1796

THA



Application/Control Number: 10/593,227  
Art Unit: 1796

Page 8